

REMARKS

This paper is responsive to the Advisory Action dated January 29, 2009 and the final Office action dated November 19, 2008 (the “Final Office Action”).

Claims 1-117, 119, 122, and 124-130 are pending, including new claims 128-130.

Claim 121 has been canceled in this paper.

Claims 1-7, 14, 16-17, 29-35, 42, 44-45, 57-63, 70, 72-73, 85-91, 98, 100-101, 114-117, 119, and 124-127 stand rejected.

Claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99, 102-112, and 122 are under objection.

Claim 113 has been allowed.

The amendments add no new matter. Support for the amendments may be found throughout Applicant’s Specification and Drawings as originally filed, for example on pp. 9-11 and in original claim 10. While not conceding that the cited reference(s) qualify as prior art, but instead to expedite prosecution, Applicant has chosen to respond as follows. Applicant reserves the right, for example in a continuing application, to establish that the cited reference(s), or other references cited thus far or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

The amendments to the claims have been made to expedite prosecution. Applicant reserves the right, for example in a continuing application, to pursue the previously pending claims or claims similar thereto. Applicant respectfully submits that the pending claims are

allowable in view of the following remarks and the above amendments, and respectfully requests reconsideration of the pending rejections.

Allowable Subject Matter

Applicant expresses continued gratitude for the indication that objected claims 8-13, 15, 18-28, 36-41, 43, 46-56, 64-69, 71, 74-84, 92-97, 99, 102-112, and 121-122 would be allowable if rewritten in independent form including all the limitations of the respective base claims and any intervening claims. Applicant wishes to maintain these claims in dependent form in view of the following remarks regarding the allowability of the respective base claims.

Applicant expresses gratitude for the indication that claim 113 is allowed.

Rejection of Claims under 35 U.S.C. § 103

Claims 1-3, 29-31, 57-59, 85-87, 114-117, 119, 124, and 127 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,282,170 issued to Bentall et al. (“Bentall”), in view of U.S. Patent No. 6,577,595 issued to Counterman (“Counterman”). Claims 4-7, 14, 16, 32-35, 42, 44, 60-63, 70, 72, 88-91, 98, and 100 stand rejected under § 103(a) as being unpatentable over Bentall in view of Counterman, and further in view of U.S. Patent No. 6,728,205 issued to Finn, et al. (“Finn”). Claims 17, 45, 73, and 101 stand rejected under § 103(a) as being unpatentable over Bentall and Counterman in view of Finn and further in view of U.S. Patent No. 6,430,150 issued to Azuma, et al. (“Azuma”). Claim 125 stands rejected under § 103(a) as being unpatentable over Bentall in view of Counterman and U.S. Patent No. 5,130,974 issued to Kawamura et al. (“Kawamura”). Claim 126 stands rejected under

§ 103(a) as being unpatentable over Bentall in view of Counterman and Kawamura, and further in view of U.S. Patent No. 4,287,592 issued to Paulish, et al. (“Paulish”).

Applicant respectfully submits (as previously explained, for example on pp. 40-43 of Applicant’s January 21, 2009 Response to Final Office Action) that the claims are allowable under § 103(a) because a person having ordinary skill in the art would not make the proposed combination of references, and because the cited portions of the references fail to disclose each limitation of Applicant’s claims as presented prior to the above amendments. The Advisory Action states that “the examiner believes that [Counterman’s teachings] requires receiving information from a candidate node” (emphasis added). This statement appears to tacitly acknowledge one of Applicant’s previous arguments, that Counterman does not actually disclose the receiving of such information from a candidate node. Moreover, the Advisory Action appears to implicitly take the position that the proposed combination of Bentall and Counterman would not require a replacement of Bentall’s chooser node with Counterman’s network management system. However, neither the Final Office Action nor the Advisory Action indicates how those references could actually be combined without making such a replacement. Applicant maintains that the proposed combination of references (to the extent such a combination is possible) would require such a replacement, and that Bentall teaches against such a replacement of the chooser node.

Nonetheless, to further prosecution, Applicant has amended independent claims 1, 29, 57, and 85 as indicated above. As amended, independent claim 1 includes receiving information indicating that a candidate node has sufficient resources available to support a virtual path. The information is received from the candidate node, and the candidate node is configured to determine whether the candidate node has sufficient resources available to support the virtual

path. At least these limitations are absent from the cited portions of the references, whether taken individually or in combination.

The Final Office Action indicates on p. 3, lines 4-6, that the cited passages of Bentall fail to disclose these limitations. Applicant agrees with assessment. Applicant also does not find these limitations in the cited passages of the other cited references. At least for this reason, amended independent claim 1 and all claims dependent therefrom are allowable under § 103(a). At least for similar reasons, amended independent claims 29, 57, and 85 and all claims dependent therefrom are also allowable under § 103(a).

New claims

New claims 128-130 have been added. These claims depend variously on independent claims 29, 57, and 85, and are therefore allowable at least for the same reasons discussed above.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5097.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. §§ 1.16 or 1.17, be charged to deposit account 502306.

Respectfully submitted,

/Cyrus F. Bharucha/

Cyrus F. Bharucha
Attorney for Applicant
Reg. No. 42,324
Telephone: (512) 439-5097
Facsimile: (512) 439-5099